

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 74 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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BELIM FIROZKHAN LIMBADKHAN THRO' FRIEND MOHD SALIM GULAM

Versus

DISTRICT MAGISTRATE  
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Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Mehsana, passed an order on August 30, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining-Belim Firozkhan Limbadkhan of Mehsana, under the provisions of

the said Act.

2. The detaining authority took into consideration four offences registered against the detenu under Bombay Prohibition Act, so also statements of three witnesses, whose identity has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority exercised these powers on being satisfied about the genuineness of the fear expressed by the witnesses qua the detenu in respect of person and property of these witnesses. The detaining authority considered possibility of resorting to less drastic remedy but, ultimately, came to conclusion that the activity can be immediately prevented only if the detenu is detained under the PASA Act.

3. Mr. Kapadia, learned advocate appearing for the petitioner, has restricted his arguments to the ground of improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the detaining authority has not applied its mind to the facts of the case while exercising powers under Section 9(2). He has drawn attention of this Court to the statement of anonymous witness No.3 to indicate that the contents of the statements are so specific and detailed that identity of the witness is disclosed from the contents of the statement and, as such, there was no point in not disclosing the identity of the witness and the subjective satisfaction, for the purpose, therefore, cannot be considered as genuine. Mr. Kapadia, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the authority has verified the statements and has, thereafter, recorded subjective satisfaction for the need for exercise of powers under Section 9(2) and, therefore, the petition may be dismissed.

5. Having regard to the rival side contentions, if the statement of 3rd anonymous witness is considered, it is very clear from bare perusal that the witness gives a detailed account of his own domicile about an incident that occurred on a particular date with the detenu, about a complaint having been lodged by the witness against the detenu in respect of that incident and about alleged threat administered by the detenu. The details reveal sufficient material to possibilise identification of that anonymous witness, at least for the detenu. He claims to be neighbour of the detenu. He states that there was a quarrel with the detenu on 10th September, 1998. He

states that, he has lodged a complaint in this regard. These factors are sufficient enough to fix the identity of the witness and, therefore, if these aspects were considered by the detaining authority, the authority would have realised the futility of exercise of powers under Section 9(2) of the PASA Act in respect of this witness. This reflects non-application of mind on part of the detaining authority while exercising powers under Section 9(2) of the PASA Act and, therefore, the detention would stand vitiated.

6. A similar situation had arisen in case of Chatur Chhaganji Thakkarda v. State of Gujarat and Another, 1995 (2) GCD 860, wherein this Court had taken a very similar view in almost similar set of facts. Under the circumstances, the petition deserves to be allowed.

7. In view of the above discussion, this petition is allowed. The impugned order of detention dated August 30, 1999 passed against the detenu is, hereby, quashed. The detenu-Belim Firozkhan Limbadkhan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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